
SENATE COMMITTEE ON HUMAN SERVICES

Senator Hurtado, Chair

2021 - 2022 Regular

Bill No: AB 2119

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Version: February 14, 2022

Urgency: No

Consultant: Elizabeth Schmitt

Hearing Date: June 27, 2022

Fiscal: Yes

Subject: Veterans: Medical Foster Home Pilot Program

SUMMARY

This bill creates the Medical Foster Home (MFH) Pilot Program, under which a United States Department of Veterans Affairs (VA) facility may establish a medical foster home for veterans that is not subject to licensure or regulation as a residential care facility for the elderly or other community care facility, pursuant to federal requirements. This bill requires MFH caregivers to register as independent home care aides, requires the VA to confirm caregivers' standing on the home care aide registry monthly, and requires the VA facility to agree to be subject to the jurisdiction of the California State Auditor in order to evaluate the pilot program, which sunsets on January 1, 2027.

ABSTRACT

Existing Law:

- 1) Establishes the Medical Foster Home (MFH) program, under which the VA approves certain MFHs for the placement of veterans. The choice to become a resident of a medical foster home is voluntary on the part of each veteran. Under the MFH program, the VA refers veterans to approved MFHs, inspects homes to ensure they are meeting set requirements, and provides oversight and training to MFH caregivers. The VA may also provide certain medical benefits, consistent with the VA program in which the veteran is enrolled, to veterans placed in MFHs. (*38 Code of Federal Regulations (CFR) 17.73(a)*)
- 2) Defines a MFH to mean a private home in which a MFH caregiver provides care to a veteran resident, as provided. (*38 CFR 17.73(b)*)
- 3) Allows VA health care personnel to assist a veteran by referring such a veteran for placement in a MFH if the following conditions are met: the veteran is unable to live independently safely or is in need of nursing home level care; the veteran is enrolled in either a VA Home Based Primary Care or VA Spinal Cord Injury Homecare program, or a similar VA interdisciplinary program designed to assist medically complex veterans living in the home; and the MFH has been approved by the VA, as specified. (*38 CFR 17.73(c)*)

- 4) Establishes that the duty of the MFH caregiver, with assistance from relief caregivers, is to provide a safe environment, room and board, supervision, and personal assistance, as appropriate for each veteran. (*38 CFR 17.73(e)*)
- 5) Establishes standards applicable to MFHs, including, but not limited to: facility standards for VA community residential care facilities; requirements for recreational and leisure activities; standards for residents' bedrooms, and other health and safety requirements relative to windows, locks, smoke detectors, sprinkler systems, fire extinguishers, emergency lighting, and oxygen safety, among other standards. (*38 CFR 17.74*)
- 6) Establishes the California Community Care Facilities Act, which provides regulatory structure for a coordinated and comprehensive statewide system of care for individuals with mental illnesses, individuals with disabilities, and children and adults who require care or services provided by licensed community care facilities. (*HSC 1500 et seq.*)
- 7) Establishes a regulatory structure for licensed residential care facilities for persons with chronic life-threatening illness that serve people who are 18 years of age or older or are emancipated minors and requires license holders to provide basic services for each resident, as specified. (*HSC 1568.01 et seq.*)
- 8) Establishes the California Residential Care Facilities for the Elderly (RCFE) Act, which requires facilities that provide personal care and supervision, protective supervision, or health related services for persons 60 years of age or older who voluntarily choose to reside in those facilities to be licensed. (*HSC 1569 et seq.*)
- 9) Defines "residential care facility for the elderly" to mean a housing arrangement chosen voluntarily by individuals ages 60 and older, or their authorized representative, where varying levels and intensities of care and supervision, protective supervision, personal care, or health-related services are provided, based upon their varying needs, as determined in order to be admitted and to remain in the facility. (*HSC 1569.2(p)(1)*)

This Bill:

- 1) Expresses the intent of the Legislature to expand the VA MFH program in California by authorizing VA facilities in the state to establish MFHs that are exempt from regulation under the California Residential Care Facilities for the Elderly Act, the California Community Care Facilities Act, and provisions governing Residential Care Facilities for Persons with Chronic Life-Threatening Illness.
- 2) Establishes the MFH Pilot Program.
- 3) Allows a VA facility to establish a MFH program in California no sooner than June 1, 2024. Exempts a MFH from licensure or regulation under the California RCFE Act, the California Community Care Facilities Act, and provisions governing Residential Care Facilities for Persons with Chronic Life-Threatening Illness if all of the following requirements are met:

- a) The MFH meets all standards for MFH approval, as provided in federal regulations.
 - b) The VA facility establishing the foster home agrees to be subject to the jurisdiction of the California State Auditor to perform all of the California State Auditor's duties in evaluating the program.
 - c) A MFH caregiver or any individual over age 18 who resides in the home, other than a veteran resident, registers as an independent home care aide, as provided.
 - d) The VA facility establishing the MFH verifies that persons are registered as independent home care aides as part of the facility's monthly visits to the MFH.
- 4) States the intent of the Legislature that the California State Auditor, in response to a request to the Joint Legislative Audit Committee, conduct an audit that assesses and evaluates the pilot program no sooner than January 1, 2025. States the intent of the Legislature that the audit be used to do both of the following:
- a) Evaluate the success of the pilot program by confirming that the VA facilities are meeting their goals and standards.
 - b) Make recommendations to the Legislature regarding the continuation of the program, including, but not limited to, recommendations regarding changes or reforms needed for improvement of the program.
- 5) Creates the following definitions for purposes of implementing these provisions:
- a) "Medical foster home" means a private home in which a MFH caregiver provides care to a veteran resident; the MFH caregiver lives in the MFH; the MFH caregiver owns or rents the MFH; and there are not more than three residents receiving care (including veteran and non-veteran residents), as defined in federal regulations.
 - b) "Medical foster home caregiver" means the primary person who provides care to a veteran resident in a MFH.
 - c) "USDVA facility" means a United States Department of Veterans Affairs facility.
 - d) "Veteran resident" means a veteran residing in an approved MFH who meets the following eligibility criteria: the veteran is unable to live independently safely or is in need of nursing home level care; the veteran is enrolled in, or agrees to be enrolled in, either a VA Home Based Primary Care or VA Spinal Cord Injury Homecare program, or a similar VA interdisciplinary program designed to assist medically complex veterans living in the home; and the MFH has been approved by the VA, as provided in federal law.
- 6) Sunsets the pilot program on January 1, 2027.

FISCAL IMPACT

According to an analysis prepared by the Assembly Committee on Appropriations, this bill would have the following fiscal impact: onetime State Auditor costs in the range of \$250,000 to \$300,000 (General Fund) to evaluate the MFH program and prepare an audit.

BACKGROUND AND DISCUSSION

Purpose of the Bill:

According to the author, “AB 2119 establishes the Medical Foster Home pilot program and gives veterans options on how and where they would like to age. The integrity of the program and the safety of the participants would be upheld through the strict oversight of the USDVA and the jurisdiction of the California State Auditor. California families are ready and willing to open their homes to veterans, giving them the option to live out the rest of their days in a family setting rather than that of an institution. They are ready to serve those who have served, and AB 2119 will make this possible.”

VA Medical Foster Home (MFH) Program

The VA oversees the MFH program. MFHs are private homes in which a trained caregiver provides services, primarily activities of daily living such as bathing, dressing, and cooking, to a up to three veterans. The VA approves and inspects MFHs, which often serve as an alternative to a nursing home for veterans who require nursing home care but prefer a non-institutionalized setting with fewer residents.

To qualify for the MFH program, a veteran must be in need of a nursing home level of care and be enrolled in the VA’s Home Based Primary Care, VA Spinal Cord Injury Homecare program, or a similar VA interdisciplinary program designed to assist medically complex veterans living in the home. Each MFH program is connected to a VA Medical Center or outpatient clinic. The veteran receives care and regular visits by the VA interdisciplinary care team, which includes an advanced registered nurse practitioner, nurse, social worker, dietician, psychologist, occupational therapist, and recreational therapist. The caregiver, who resides in the MFH, assists the veteran with activities of daily living, such as bathing, getting dressed, meals, laundry, cleaning, and other activities. Each MFH caregiver is recruited and screened by the MFH program coordinator. MFH caregivers must have had previous caregiver experience (either formal or informal). MFH coordinators also provide caregivers with ongoing training to assist in their work.¹ In addition to visits from the interdisciplinary care team, the VA MFH Coordinator is required to conduct monthly visits to the MFH.

MFHs are distinguished from other typical residential care homes because a MFH caregiver is required to reside in their own private home while providing 24-hour personal care and supervision to the residents. No more than three veterans may live and receive care in a MFH. There are currently over 700 MFHs operating in 41 states and Puerto Rico.

¹ Levy, C., Haverhals, L., Gilman, C., & Manheim, C. (2018). The Veterans Health Administration's Medical Foster Home Program: Where Heroes Meet (Older) Angels. *Generations* (San Francisco, Calif.), 43(3), 47–50.

Residential Care Facilities for the Elderly (RCFE)

Sometimes referred to as assisted living facilities, RCFEs are responsible for providing housing, housekeeping, supervision, and personal care assistance with activities of daily living, like hygiene, dressing, eating, and walking, to individuals ages 60 and older. California's network of RCFEs range from small homes serving a handful of residents to larger RCFEs that can house over 100 residents in communities across the state. Facilities provide a special combination of housing, personalized supportive services, and 24-hour staff designed to respond to the individual needs of those who require help with activities of daily living. This level of care and supervision is for people who are unable to live by themselves but who do not need 24 hour nursing care. They are considered non-medical facilities and are not required to have nurses, certified nursing assistants or doctors on staff. RCFEs are licensed and overseen by the California Department of Social Services (CDSS). As of March 2021, there were 7,503 RCFEs in California. Approximately 80 percent of California's RCFEs are licensed for four to six beds.

According to the VA, there are currently seven MFHs in California; these homes operate dually as RCFEs and MFHs and serve a total of 12 veterans. Under existing law, MFHs fall under the jurisdiction of CDSS as RCFEs. This causes numerous barriers to the operation of the MFH program in California. It requires a MFH caregiver to have their personal home become a licensed RCFE, become a certified administrator, and incur costs associated with training and licensure, in addition to the federal approval, inspection, and training requirements governing MFHs. Most RCFEs in California are licensed to operate with four to six beds; the maximum number of residents receiving care in a MFH is three. Importantly, RCFEs are non-medical models, whereas MFHs are medical models that provide a nursing home level of care to veterans enrolled in the VA's Home Based Primary Care or similar programs.

This bill would create the MFH pilot program in California by allowing a VA facility in California to establish a MFH program that is not subject to licensure or regulation as an RCFE or similar community care facility, if the MFH meets federal requirements, the VA facility establishing the MFH program agrees to be subject to the jurisdiction of the State Auditor, and the caregivers and other adult residents in the home register as independent home care aides. This bill sunsets the pilot program on January 1, 2027.

Home Care Aide Registry

The Home Care Services Bureau (HCSB), under CDSS, is responsible for licensing home care organizations, including processing applications, receiving and responding to complaints, and conducting unannounced visits to ensure compliance. HCSB is also responsible for the home care aide application process and maintenance of the Home Care Aide Registry, which is a public online registry for home care aides who have been background checked. The Home Care Aide Registry is intended to promote consumer protection for older adults and individuals with disabilities who hire private aides to come into their homes and provide assistance with activities of daily living. Caregivers who wish to be registered on the Home Care Aide Registry but are not employed by a home care business may register as independent home care aides.

This bill requires the MFH caregiver and any person over age 18 living in the MFH to register as independent home care aides in order to be fingerprinted and receive a background check

clearance from CDSS. This bill further requires the VA facility establishing the MFH to verify that persons are registered as independent home care aides as part of monthly visits to the MFH.

Previous Attempts to Establish the MFH Program in California

The Legislature has made several attempts over the last eight years to establish a workable MFH program in California. AB 1821 (*Gordon, Chapter 650, Statutes of 2014*) established the first MFH pilot program, but the authority to initiate the pilot program was never exercised. According to the VA, VA policy at that time prohibited the VA from being the agent of background check information; thus the VA was unable to satisfy the background check requirement of the pilot program. AB 2607 (*Berman, 2018*) attempted to reauthorize the pilot program by requiring MFH caregivers and adult residents to register as independent home care aides, providing a mechanism for those individuals to be fingerprinted and receive a background check. AB 2607 was held on the Assembly Committee on Appropriations suspense file. AB 550 (*Flora, 2019*) was nearly identical to AB 2607 from the prior year, except that it added a requirement for the VA to check the status of the caregiver's and residents' status on the Home Care Aide Registry as part of each required monthly visit to ensure the caregiver remains in good standing. AB 550 was vetoed by the Governor. The Governor's veto message stated:

“This bill would authorize a Medical Foster Home Pilot Program for veterans that would be exempt from state licensure or regulation and subject only to oversight by the federal government.

Other community care facilities in the state are subject to licensure and regulation by the Department of Social Services to ensure safety standards and safeguards. The state should maintain oversight of the operation of the homes proposed under this bill to ensure that California veterans in these homes do not have fewer safety protections than residents in other community care settings.

Therefore, I am directing the California Health and Human Services Agency and the Department of Social Services to explore a workable regulatory model, including any necessary statutory changes, to allow such a pilot program to move forward. I am committed to working collaboratively on a regulatory model that preserves California's oversight and values while allowing for Medical Foster Homes to operate in our state.”

This bill is identical to AB 550.

Related/Prior Legislation:

AB 550 (*Flora, 2019*) was identical to this bill. AB 550 was vetoed by the Governor.

AB 2607 (*Berman, 2018*) would have reauthorized the MFH pilot program and required MFH caregivers and adult residents to be registered as independent home care aides. AB 2607 was held on the Assembly Committee on Appropriations suspense file.

AB 1821 (*Gordon, Chapter 650, Statutes of 2014*) established the MFH pilot program from June 1, 2015 through January 1, 2018. This pilot program was never implemented.

COMMENTS

The VA MFH program is a unique program that blends home-based health care for veterans in need of a nursing home level of care with a foster care model, by providing a family setting where the veteran may reside and receive care, as an alternative to a nursing home. Research has shown that this program “has shown benefits in building community and improving quality of life for veterans, caregivers, and family members of veterans living in MFHs across the United States.”² California’s licensing structure does not account for MFHs, and thus requires MFHs to function as RCFEs, which poses a number of implementation issues. Because of this, veterans in California are largely unable to benefit from this program that provides veterans in nearly every other state with an alternative to institutional care.

Given the veto of AB 550, it is clear that providing a wholesale exemption of the MFH program from any state licensing requirements is not a viable path forward for this program. Rather, as Governor Newsom stated to in his veto message of AB 550, it seems like a regulatory model that allows the VA to operate MFHs in California while still providing a reasonable level of state oversight to protect resident health and safety is necessary.

The author has been working with the administration to achieve such an outcome, and has recently received technical assistance from CDSS. The proposal reflected in the technical assistance would create a new licensing structure specific to VA MFHs, including:

- Procedures for the licensing, application for a license, and the suspension, denial, forfeiture, or revocation of a license;
- Unannounced annual inspections of the MFH by CDSS to ensure quality of care;
- Procedures for handling resident complaints, including through the local or state ombudsman;
- Civil penalties for violations, including for operation of an unlicensed MFH;
- Fingerprinting and criminal record clearance for caregivers, adults residing in the MFH, and additional individuals who have contact with clients;
- Exclusion from licensed MFHs of a person with prior license revocation or other specified history;
- Training requirements, including a requirement that caregivers provide CDSS with evidence of training provided by the VA, and the authorization for CDSS to require additional caregiver and relief caregiver training if determined necessary; and
- Authorization for CDSS to implement and administer the licensing of MFHs through written directives until regulations are adopted.

Due to timing constraints, the technical assistance provided by CDSS was not ready to be processed by this Committee. For this reason, this Committee is not proposing the agreed upon language as committee amendments. The author has committed to make these amendments while the bill is waiting to be heard by the Senate Committee on Appropriations and to continue working with this Committee on the adoption of this new language.

² *Id.*

PRIOR VOTES

Senate Military and Veterans Affairs Committee:	4 - 0
Assembly Floor:	76 - 0
Assembly Appropriations Committee:	16 - 0
Assembly Military and Veterans Affairs Committee:	8 - 0

POSITIONS

Support:

None received

Oppose:

None received

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